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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10

11 ANDY CRUZ GOMEZ,

12 Plaintiffs,

13 v.

14 NEW CHAMPION PROMOTIONS, LLC; JESSE
15 RODRIGUEZ; MATCHROOM BOXING USA,
16 LLC; AND DOES 1-25,

17 Defendants,
18 _____
19 And related Cross-Actions
20
21

Case No.: 3 :23-cv-06608-WHO

**[PROPOSED] FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

22 **I. INTRODUCTION**

23 This matter came for bench trial from September 2-5, 2025, on Plaintiff/Cross-Defendant
24 ANDY CRUZ GOMEZ (“Cruz”) and Defendant/Cross-Complainant NEW CHAMPION
25 PROMOTIONS LLC’s (“NCP”) claims for Declaratory Relief requiring me to interpret the rights
26 and obligations of Cruz, NCP, and non-participating party MATCHROOM BOXING USA,

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28 ///

1 LLC (“Matchroom”) under two boxing promotional agreements. (See, Documents 110, 118, 119,
2 120, 121, 124, 125 and 71.)¹

3 Cruz and NCP submitted competing Proposed Findings of Fact and Conclusions of Law on
4 September 29, 2025. (See, Document 130.)

5 **II. FINDINGS OF FACT**

6 **A. Credibility of the Parties and Witnesses**

7 The witnesses at trial were Cruz, his boxing managers Yolfri Sanchez (“Sanchez”) and
8 Alexy Ferrer (“Ferrer”), NCP President Jesse Rodriguez (“Rodriguez”), Matchroom President Frank
9 Smith (“Smith”), and NPC expert Stephen Bash.

10 Cruz testified credibly about his background, his career, and his understanding of the
11 agreements at issue, and why he signed them.

12 Ferrer testified credibly as to his dealings in the boxing business and the relevant
13 agreements.

14 Sanchez testified credibly about the agreements at issue and the dealings between the
15 parties. He also testified, at times against his own interests, about a series of side agreements
16 between himself and Rodriguez involving sharing their respective promotional and management
17 commissions and outside business ventures, such as helping to fund a baseball player to defect from
18 Cuba.

19 Smith’s testimony was credible as to his limited knowledge of the terms of agreements
20 between Cruz and NCP.

21 Rodriguez’ testimony often times contradicted itself and the case exhibits entered into
22 evidence. For example, Rodriguez testified on direct that there was a text message from Sanchez in
23 which Sanchez confirmed NCP was due 25% of Cruz’ signing bonus (“And he specifically says the
24 25 percent.”) (409:11-410:6.) On cross-examination, Rodriguez repudiated this testimony (“You
25 can read it back. I have never said that he agreed in writing to pay me 25 percent.”) (428:4-429:18.)

27 ¹ Although the operative Complaint and Cross-Complaint mentioned both the NCP Promotional
28 Agreement and the Matchroom Promotional Agreement, neither pleading brought an action under the NPC
PA nor specifically asked the Court to interpret it.

1 Further, Rodriguez testified that had “absolutely not” been told by Matchroom that it couldn’t pay
2 Cruz’ Cuban bank account. (484:11-485:14.) He was then impeached with the introduction of
3 Exhibit 10, an email to him from Matchroom’s counsel informing him “As I am sure you are aware,
4 we will need to pay into a US account due to imposed sanctions in Cuba.” (485:15-487:16.)

5 NCP’s expert, Mr. Bash, answered questions directly when posed by Mr. Gallegos or by the
6 Court, but would not provide direct answers to questions posed by Mr. Smith. However, he
7 ultimately conceded that it would not be appropriate for a promoter to take a provision of services
8 fee from a sum characterized as a purse, but that it could do some from a “package fee.” (570:7-
9 571:19.)

10 **B. Background**

11 Cruz is a professional boxer. Prior to “turning pro” Cruz was a highly decorated amateur
12 boxer. He joined the Cuban boxing academy when he was eleven years old and then went on to
13 win many national and international tournaments, including an Olympic gold medal in Tokyo 2020
14 games. (223:7-9; 224:13-15; 225:2-16.)

15 Despite Cruz’ talents, the laws of Cuba prevented him from fighting professionally; to earn
16 a living he had to escape Cuba and government chaperones who traveled with him. (225:19-25-
17 226:1-16.)

18 Cruz’ initial attempts to escape Cuba failed; he was caught and jailed by the communist
19 regime. (227:14-18.)

20 In mid-2022, Cruz became connected with Dominican baseball manager Sanchez; thereafter
21 the men has a series of calls about Sanchez helping Cruz get out of Cuba. (23:1-11; 63:18-25.)

22 Sanchez had a history of successfully extracting athletes from Cuba. (21:1-3; 21:25-22:13.)

23 With Sanchez’ help, Cruz obtained a Visa enabling him to travel from Cuba to the
24 Dominican Republic; Cruz arrived on November 5, 2022. (23:2-7.)

25 Prior to Cruz’ arrival in the Dominican Republic, Sanchez began to contemplate managing
26 Cruz’ professional career; because he did not have boxing knowledge, Sanchez reconnected with
27 Ferrer. (23:8-15; 23:23-25; 24:8-11.)

1 Ferrer, himself a former boxer, had previously left Cuba and was living in the United States
2 while managing professional boxer David Morrell. (76:3-11; 169:3-23.)

3 In or about October 2022, Ferrer introduced Sanchez to Rodriguez. (24:22-25:8.)

4 Ferrer had met Rodriguez in early 2022 through a boxing reporter. (173:1-174:2.)

5 Thereafter, Ferrer began to manage a couple of other Cuban fighters who were signed to
6 promotional agreements with NCP, Rodriguez' promotions company. (174:25-175:9.)

7 At the time, Rodriguez was paying those fighters – Mr. Leon, Mr. Castro, and Alex – and
8 was not taking any more from their purses as a promotional fee. (430:1-433:21.)

9 Even before being connected to Rodriguez, it was Sanchez and Cruz' plan to sign Cruz to a
10 large promoting company that had a world class platform and budget worthy of Cruz' talents.
11 (25:9-22.)

12 Rodriguez represented himself as someone with connections to the major promoters in
13 United States boxing who was capable of helping Sanchez and Ferrer obtain a lucrative promotional
14 agreement for Cruz. (26:11-23.)

15 **C. The NCP/Cruz Promotional Agreement (Dated November 8, 2022)**

16 In November 2022, a few days after Cruz arrived in the Dominican Republic, Cruz, Ferrer,
17 Sanchez, and Rodriguez had dinner so that the group could meet in person. (26:24 -27:14.)

18 Following the dinner – either later that night or the next morning – Rodriguez presented a
19 Boxing Promotional Agreement with New Champion promotion to Cruz (“NCP PA”). Cruz
20 executed the NCP PA on November 8, 2022 over breakfast at a restaurant in the Dominican
21 Republic. (242:21:244:6.)

22 Cruz did not consult counsel before signing the agreement. (148:25-149:6.)

23 However, Cruz spoke with Rodriguez, who told him that the agreement was necessary to
24 allow him speak with the major promoters on Cruz' behalf. (243:6-244:2.)

25 Rodriguez told Cruz that NCP's earnings would come from the promoter and not come out
26 of Cruz' purses. (239:13-24.)

27 The NCP PA specified that NCP would put on a specified number of bout featuring Cruz
28 and would pay him purses to appear therein. (439:17-19.)

1 However, Cruz had zero expectation that NCP would actually promote one of his bouts,
2 because he expected to sign a promotional agreement with a bigger company. (240:7:15; 244:23-
3 245:8.)

4 The NCP PA specified minimum purses, with actual sums subject to negotiation, but no
5 maximum. (439:23-440:18.)

6 Cruz' purses under the NCP PA could have run into the hundreds of thousands or millions
7 of dollars. (449:3-15.)

8 At no point after the execution of the NCP PA did NCP put on a Cruz bout or did NCP pay
9 Cruz for his appearance in a boxing match. (444:19-445:12.)

10 At the time the NCP PA was executed, NCP did not have a single sponsor and did not have
11 a broadcast agreement. (437:10-14.) Rodriguez was NCP's only employee of New Champion
12 Promotions. (437:7-9.)

13 In its history, NCP had only been lead promoter for a single boxing event, on which it lost
14 money. (437:18-21.) However, Rodriguez never disclosed this failure to Cruz, Sanchez, or Ferrer.
15 (26:8-10; 175:10-16.)

16 At the same time that Cruz executed the NCP PA, he signed a management agreement with
17 Sanchez and Ferrer on a form provided by Rodriguez. That contract specified the duties of the
18 managers, payment for the managers, and guaranteed monthly salary that Sanchez would pay to
19 Cruz for the first year of the agreement. (233:12-235:11.)

20 **D. The Matchroom/NCP/Cruz Promotional Agreement (Dated May 4, 2023)**

21 Cruz signed the Matchroom PA at some time in April when he was in the Dominican
22 Republic. (247:9-247:21)

23 Prior to the time of execution, Cruz did not directly communicate with anybody from
24 Matchroom or Rodriguez about the agreement. (246:4-247:3.)

25 The commercial terms of the Matchroom PA were negotiated between Jesse Rodriguez and
26 Frank Smith of Matchroom. (449:23-25.)

27 NCP attorney Pat English negotiated terms of the Matchroom PA for NCP. (450:1-3.)

28 Cruz was unrepresented with respect to the Matchroom PA. (450:4-7.)

1 The Matchroom PA does not contain any provision specifying that NCP would receive 25%
2 of the money paid thereunder. (449:16-22.)

3 Rodriguez never told Frank Smith that the Matchroom PA needed to include a term
4 specifying 25% payment of all funds therein to NCP. (451:14-24.)

5 Rodriguez never told his attorney that the Matchroom PA needed to include a term
6 specifying 25% payment of all funds therein to NCP. (452:1-11.)

7 Rodriguez testified – inconsistently – that he and Cruz entered into a verbal agreement that
8 NCP would receive 25% of Cruz’ signing bonus and first year purses under the Matchroom PA, but
9 that any percentage of purses thereafter was undecided and would be negotiated thereafter.
10 (480:18-482:1.)

11 No document after the Matchroom PA signed by both NCP and Cruz. (454:1-18.)

12 NCP never signed any of Cruz’ bout agreements (454:19-23.)

13 Sanchez and Rodriguez each testified to a series of agreements and loans between them that
14 led to their funds being exchanged, but at no time did Cruz ever authorize NCP to withhold money
15 from him in order to satisfy any debt due from his managers. (462:24-463:19.)

16 **CONCLUSIONS OF LAW**

17 **Florida Law and the NCP PA**

18 Interpretation of a contract is a question of law. *Inter-Active Servs., Inc. v. Heathrow*
19 *Master Ass’n, Inc.*, 721 So.2d 433, 434 (Fla. 5th DCA 1998). The parties' intention governs contract
20 construction and interpretation; the best evidence of intent is the contract's plain language. *Royal*
21 *Oak Landing Homeowner's Ass’n, Inc. v. Pelletier*, 620 So.2d 786, 788 (Fla. 4th DCA 1993). The
22 court should reach a contract interpretation consistent with reason, probability, and the practical
23 aspect of the transaction between the parties. *Thompson v. C.H.B., Inc.*, 454 So.2d 55, 57 (Fla. 4th
24 DCA 1984). “All contracts must be given a reasonable interpretation according to the intention of
25 the parties at the time of executing them.” *Seritage SRC Fin., LLC v. Town Ctr. at Boca Raton Tr.*,
26 397 So. 3d 44, 46 (Fla. Dist. Ct. App. 2024), reh’g denied (Dec. 6, 2024), quoting *Holmes v.*
27 *Kilgore*, 89 Fla. 194, 103 So. 825, 827 (1925). When the terms of a contract are ambiguous, parol
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evidence is admissible to “explain, clarify or elucidate” the ambiguous terms. *Strama v. Union Fid. Life Ins. Co.*, 793 So.2d 1129, 1132 (Fla. 1st DCA 2001).

“Under Florida law, a contract implied-in-fact is an enforceable contract. It is based on an implicit promise, one that is inferred in whole, or in part, from the parties’ conduct. Typically, in these contracts, the parties have in fact entered into an agreement, but without sufficient clarity, so a fact finder must examine and interpret their conduct to define their unspoken agreement. An implied contract requires the same elements as an express contract, and differs only in the parties’ method of expressing mutual consent.” *Fertilizantes Tocantins S.A. v. TGO Agric. (USA), Inc.*, 599 F. Supp. 3d 1193, 1206 (M.D. Fla. 2022), quoting *Tracfone Wireless, Inc. v. Simply Wireless, Inc.*, 275 F. Supp. 3d 1332, 1342 (S.D. Fla. 2017).

In the State of Florida, “the well established rule of law is that a contract may be discharged or extinguished by merger into a later contract entered into between the parties in respect to the same subject which replaces the original contract.” *Aly Handbags, Inc. v. Rosenfeld*, 334 So.2d 124, 126 (Fla. 3d DCA 1976), citing 7 Fla. Jur. Contracts § 166 (1956).

“[A] merger clause is a highly persuasive statement that the parties intended the agreement to be totally integrated.” *World-Class Talent Experience, Inc. v. Giordano*, 293 So. 3d 547, 549 (Fla. 4th DCA 2020), review denied, No. SC20-797, 2020 WL 6867221 (Fla. Nov. 23, 2020). “To determine the intent of the parties, a court should consider the language in the contract, the subject matter of the contract, and the object and purpose of the contract.” *MDS (Canada) Inc. v. Rad Source Techs., Inc.*, 143 So. 3d 881, 891 (Fla. 2014) (quoting *Am. Home Assurance Co. v. Larkin Gen. Hosp., Ltd.*, 593 So.2d 195, 197 (Fla.1992)).

These principles were applied and confirmed by the Federal Court in *Katz v. Fifield Realty Corp.*, 746 F.Supp.2d 1265 (USDC S.D. FL, 2010), which involved an initial and amended agreement for Katz to purchase a condo built by FRC. As the Court explained, “The undisputed record evidence establishes that, in January 2008, the parties executed an Amendment to Purchase Agreement which provided that, upon execution of the 2008 Contract and expiration of the statutory rescission period ‘the [2006 Contract] will automatically be deemed terminated.’ [DE 151–5, p. 2]. It also is undisputed that Plaintiffs executed the 2008 Contract, and did not exercise

1 their statutory right to rescind that contract. [DE 174, ¶¶ 12–13]. Thus, pursuant the plain language
 2 of the Amendment to Purchase Agreement, the 2006 Contract was terminated when the statutory
 3 period to rescind the 2008 Contract expired.” *Id.* at 1269. The Court when quoted the merger
 4 clause from the 2008 (later in time) contract: “This Agreement contains the entire understanding
 5 between Buyer and Seller. **Any current or prior agreements, representations, understandings**
 6 **or oral statements of sales representatives or others, if not expressed in this Agreement, the**
 7 **Condominium Documents or in brochures for the Condominium, are void and have no effect.**
 8 **Buyer agrees that Buyer has not relied on them.**” (emphasis original) *Id.* Finally, the Court
 9 concluded that “Because the 2006 Contract was terminated by the parties’ Amendment to Purchase
 10 Agreement, and replaced by their 2008 Contract, the 2006 Contract” could not be the basis for a
 11 cause of action. *Id.* at 1269-1270.

12 New York Law and the Matchroom PA

13 New York law on the interpretation of contracts requires, “when parties set down their
 14 agreement in a clear, complete document, their writing should as a rule be enforced according to its
 15 terms” *W.W.W. Assoc. v. Giancontieri*, 77 N.Y.2d 157, 162, 565 N.Y.S.2d 440, 566 N.E.2d 639
 16 (1990). Whether a contractual term is ambiguous must be determined by the court as a matter of law,
 17 looking solely to the plain language used by the parties within the four corners of the contract to
 18 discern its meaning and not to extrinsic sources. *See Kass v. Kass*, 91 N.Y.2d 554, 566, 673 N.Y.S.2d
 19 350, 696 N.E.2d 174 (1998). Unless a Court first finds ambiguity on the face of the agreement,
 20 extrinsic and parol evidence is inadmissible at trial or on a motion for summary judgment to create
 21 ambiguity. *See W.W.W. Assoc. v. Giancontieri*, 77 N.Y.2d 157, 163, 565 N.Y.S.2d 440, 566 N.E.2d
 22 639 (1990).

23 Importantly, “ambiguity never arises out of what was not written at all, but only out of what
 24 was written so blindly and imperfectly that its meaning is doubtful.” *Greenfield v. Philles Recs., Inc.*,
 25 98 N.Y.2d 562, 573, 780 N.E.2d 166, 173 (2002), quoting *Trustees of Freeholders & Commonalty of*
 26 *Town of Southampton v. Jessup*, 173 N.Y. 84, 90, 65 N.E. 949 (1903).

27 “Courts should be extremely reluctant to interpret an agreement as impliedly stating
 28 something which the parties have neglected to specifically include.” *Vermont Teddy Bear Co. v. 538*

1 *Madison Realty Co.*, 1 N.Y.3d 470, 475, 775 N.Y.S.2d 765, 807 N.E.2d 876 (2004). Courts may not
2 by construction add or excise terms, nor distort the meaning of those used and thereby make a new
3 contract for the parties under the guise of interpreting the writing.” *Reiss v. Financial Performance*
4 *Corp.*, 97 N.Y.2d 195, 199, 738 N.Y.S.2d 658, 764 N.E.2d 958 (2001).

5 Under New York law, a “substituted agreement immediately discharge[s]” previous
6 obligations and replaces them with obligations under the new agreement. See *Denburg v. Park*
7 *Chapin Flattau & Klimpl*, 604 N.Y.S. 2d 900, 906 (1993). Thereafter, a party may not sue for
8 breach of the old agreement. See *Frank Felix Assocs., Ltd. v. Austin Drugs, Inc.*, 111 F.3d 284, 287
9 n.1 (2d Cir. 1997) (“[A] substitute agreement extinguishes a claimant's prior claims upon execution
10 of the agreement”); *Health-Chem Corp. v. Baker*, 915 F.2d 805, 811 (2d Cir. 1990) (stating that
11 when a new agreement supersedes an older one, “the previous agreement is extinguished, thereby
12 reducing the remedy for breach to a suit on the new agreement”).

13 These principles are well illustrated in *Citigifts, Inc. v. Pechnik*, 112 A.D.2d 832 (1985). In
14 that action, the Court considered two different agreements between the Pechnik and Goldfarb to sell
15 a card and gift shop on Manhattan. *Id.* at 832-833.

16 In January 1981, Pechnik and Goldfarb signed a contract wherein Goldfarb would buy the
17 business for “for payment of \$33,750 at the signing of the contract, to be held in escrow; a check
18 for \$103,750 at the closing; and the balance plus interest to be paid under a schedule, \$165,000 over
19 a 36-month period, and \$597,500 over a succeeding 144-month period. However, in a handwritten
20 rider to the contract, Goldfarb agreed to an additional \$200,000 cash payment on or before closing.”
21 *Id.* at 833. Closing under the agreement was delayed. In May 1981, Pechnik and Goldfarb executed
22 another agreement, this time by and through Citigifts, Inc., an entity owned by Goldfarb.

23 “The terms of this second contract were substantially the same as the first, except that the schedule
24 of payments was changed and it included the sentence: ‘This agreement supersedes any concurrent
25 or previously signed documents.’” *Id.* Thereafter Citigifts, Inc. and Goldfarb brought an action for
26 breach of the earlier January 1981 agreement. The Court found that the action could not stand on
27 that agreement because, “Simply stated, the contract signed in May constituted a novation of the
28 agreement reached four months earlier. By its terms, the May 4 contract superseded all prior or

1 currently existing agreements between the parties. Such a novation extinguished the old agreement
 2 (*Blair & Co. v. Otto V.*, 5 A.D.2d 276, 171 N.Y.S.2d 203), thereby reducing the remedy for breach
 3 to a suit on the new agreement (*Northville Industries Corp. v. Fort Neck Oil Terminals Corp.*, 100
 4 A.D.2d 865, 867, 474 N.Y.S.2d 122).” *Id.* at 834.

5 These rules from *Citigifts, Inc.* were echoed by the United States District Court in *Witek v.*
 6 *City of New York*, No. 12-CV-981(CBA)(VVP), 2018 WL 11691108, at *4 (E.D.N.Y. Mar. 5,
 7 2018), which informs, “Under New York law, a ‘substituted agreement immediately discharge[s]’
 8 previous obligations and replaces them with obligations under the new agreement. See *Denburg v.*
 9 *Park Chapin Flattau & Klimpl*, 604 N.Y.S. 2d 900, 906 (1993). Thereafter, a party may not sue for
 10 breach of the old agreement. See *Frank Felix Assocs., Ltd. v. Austin Drugs, Inc.*, 111 F.3d 284, 287
 11 n.1 (2d Cir. 1997).”

12 In Defendants’ Trial Brief, they argue that the Court should place substantial meaning in the
 13 fact that the Matchroom PA occasionally uses the phrase “Promoter/Fighter” where NCP is defined
 14 as Promoter and Cruz is defined as Fighter. Specifically, Defendants argue that Section 3.4 implies
 15 that “NCP/Cruz” are tied together beyond the expiration of the Matchroom PA. However Defendants
 16 interpretation of the virgule or “slash” is contrary to the definition thereof and New York law.²

17 In *L. B. Smith, Inc. v. Bankers Trust Co. of Western N. Y.*, 80 A.D.2d 496 (1981) the Court
 18 considered the meaning of a check made out to A/B and whether the virgule should be read to mean
 19 “and” or “or”. “Simply put: does a check payable to “A/B” require the endorsement of both payees
 20 for negotiation or of only one?” *Id.* at 496. New York adopted the conclusion of the USDC DC and
 21 the Court of Appeals of Georgia and held “The virgule is normally used to separate alternatives. Thus,
 22 a bank exercising reasonable care and acting in good faith would necessarily interpret a check drawn
 23 to two payees whose names are separated by a virgule as being drawn payable to the payees in the
 24 alternative.” *Id.* at 498. Accordingly the reasonable reading of the Matchroom PA is not that
 25 Matchroom was binding Cruz and NCP together after the agreement expired, but rather that
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27 ² Virgule is defined as follows: “[A] short diagonal line (/) placed between two words to indicate that
 28 either word can be used in interpreting the statement. Example: and/or; i. e., either “and” or “or” (Webster’s
 New Twentieth Century Dictionary of the English Language, Unabridged, Second Edition [1964]).

1 Matchroom was casting a broad net to make sure that neither NCP nor Cruz, whichever might be
2 applicable, would seek to circumvent its exclusive negotiation and matching rights.

3 **HOLDINGS**

4 In light of the findings of fact and conclusions of law, I find as follows:

- 5 1) Although the NCP PA facially required NCP to promote a certain number of Cruz fights,
6 and required NCP to pay Cruz for those fights, neither Cruz nor NCP had a reasonable
7 expectation that NCP would actually do so.
- 8 2) Instead, the agreed purpose of the NCP PA was for NCP to hold Cruz' promotional rights so
9 that it would have documented permission to negotiate an agreement between Cruz and a
10 "major" boxing promoter.
- 11 3) NPC was allowed to negotiate its own payment from that "major" promoter, but had no
12 right or claim to money to be paid to Cruz from that promoter.
- 13 4) The purpose of NCP PA was completed when Cruz and NCP executed the Matchroom PA,
14 which was negotiated by NCP and its counsel Pat English.
- 15 5) Accordingly, the Parties have no further rights or obligations to each other under the NCP
16 PA.
- 17 6) The payment structure of the signing bonuses and purses specified in the Matchroom PA
18 was required because Cruz did not have access to a United States bank account when the
19 agreement was signed; Cruz now has a bank account and payment need not be directed
20 through NCP.
- 21 7) The signing bonuses and purses set forth in the Matchroom PA, and paid by Matchroom, are
22 the property of Cruz.
- 23 8) The various bout agreements, to the extent they deviated from the amount stated in the
24 Matchroom PA or otherwise agreed to the by the Parties, do not modify the Matchroom PA;
25 they are not an indication that Cruz was agreeing to take less money, or that NCP was
26 entitled to any money.
- 27 9) The phrase "Promoter/Fighter" where it appears in the Matchroom PA, should be read
28 "NPC or Cruz" or "neither NPC nor Cruz".

1 The performance of the parties, compliance with the stated obligations, and damages due (if
2 any) are reserved for further proceedings herein.

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4 **IT IS SO ORDERED.**

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6 Date: _____

7 William H. Orrick
8 United States District Judge
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